


MIAMI BEACH

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COMMISSION MEMORANDUM

TO: MAYOR DAN GELBER Second Reading/Public Hearing
MEMBERS OF THE CITY COMMISSION

FROM: RAFAEL A. PAZ, CITY ATTORNEY 

DATE: DECEMBER 8, 2021

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," BY CREATING NEW SUBSECTION (9), WHICH WILL REQUIRE CERTAIN ALCOHOLIC BEVERAGE ESTABLISHMENTS POSSESSING A LICENSE TO SELL AND/OR SERVE ALCOHOLIC BEVERAGES IN THE CITY UNTIL 5 A.M. ("ALCOHOL LICENSE"), TO PROVIDE WRITTEN NOTIFICATION TO THE CHIEF OF POLICE OR DESIGNEE REGARDING ANY PROMOTED EVENT OR CONCERT THAT WILL HAVE A LIVE MUSICAL PERFORMANCE OR ENTERTAINMENT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Commissioner Samuelian has sponsored this proposed amendment to Section 6-3 of the City Code (the "Ordinance"), which was initially presented and heard by the Neighborhood and Quality of Life Committee (the "NQLC") on July 21, 2021. The members of the NQLC supported this Ordinance, which would require alcoholic beverage establishments with a 5:00 a.m. alcohol license and total maximum legal occupant content ("occupancy load") greater than 350 persons, to provide advance notification to the Police Department of any promoted event or concert ("promoted event"), which term is defined as any live musical performance or live entertainment in which an entertainer is advertised or marketed to perform at an alcoholic beverage establishment, that will be occurring at their respective establishments.

The proposed Ordinance would require those alcoholic beverage establishments, having a promoted event, to provide written notification to the Chief of Police (or designee), **a minimum of 96 hours prior to each such promoted event**, with specific information about the promoted event, in order to permit the Police Department to take any necessary measures to mitigate

potential issues or impacts such as traffic, crowd control, or street closures during the promoted event or concert.

Specifically, the written notification set forth in the proposed Ordinance would require these alcoholic beverage establishments to identify the following:

- The date of the promoted event or concert;
- The name of all performer(s) or entertainer(s);
- The name and contact information of the person or entity who is promoting the event or concert;
- The number of tickets sold for the promoted event or concert; and
- The security plan for the promoted event or concert, which must include the number of private security personnel to be utilized at the event or concert, and any request(s) for MBPD off-duty police.

Equally important, the Police Chief would have the opportunity, sufficiently in advance of the promoted event, to review the notification from the alcoholic beverage establishment and determine whether the security plan for the promoted event would adequately manage and control the anticipated level of attendance at the event.

This requirement would further permit the Police Department to allocate additional Police resources to contend with the large crowds entering the City and at the promoted event, and thereby minimize the issues the City has endured regarding public safety, the quality of life in the City's residential neighborhoods and reduce the adverse impacts upon the Police Department and any logistical challenges created throughout the City.

The proposed Ordinance was heard and approved by the Mayor and City Commission upon First Reading at the October 13, 2021 City Commission Meeting. However, at that time, a question was raised with regard to whether the Ordinance would withstand a First Amendment challenge.

Essentially, since alcoholic beverage establishments are not traditional public forums (nor designated public forums), the City may appropriately regulate such establishments without violating the First Amendment, so long as the City's regulation is reasonable and not content-based. Here, the written notification required by the Ordinance is completely content neutral and applicable irrespective of the performer, content or message to be conveyed. Moreover, the notification requirement serves substantial governmental purposes entirely unrelated to the content of the event or performance in that it provides the Police Department with information to enable the department to allocate resources and staffing as necessary to maintain public safety and order. In addition, the Ordinance merely imposes a very minor burden upon alcoholic beverage establishments (which notification may be remitted via letter, e-mail, facsimile or other written communication, may be accomplished at no cost to the alcoholic beverage establishment, and only applies if the establishment is having a promoted event or concert). Finally, the Ordinance in no way prohibits, nor provides the City any discretion to prohibit (or otherwise inhibit), any such promoted event from occurring at any alcoholic beverage establishment.

Based upon the direction provided at First Reading, the Ordinance has been modified prior to Second Reading to: 1.) only encompass those alcoholic beverage establishments with a 5:00 a.m. alcohol license **and a total maximum occupancy load greater than 350 persons**; 2.) define the term "promoted event or concert" to mean any live musical performance or live entertainment in which an entertainer is advertised or marketed to perform at an alcoholic beverage establishment; and 3.) provide a mechanism for an alcoholic beverage establishment

to provide the Police Department with the required written notification, without violating the Ordinance, for a promoted event which is only booked, advertised and marketed within ninety-six (96) hours of its commencement.

RAP/RFR/MAF/bs